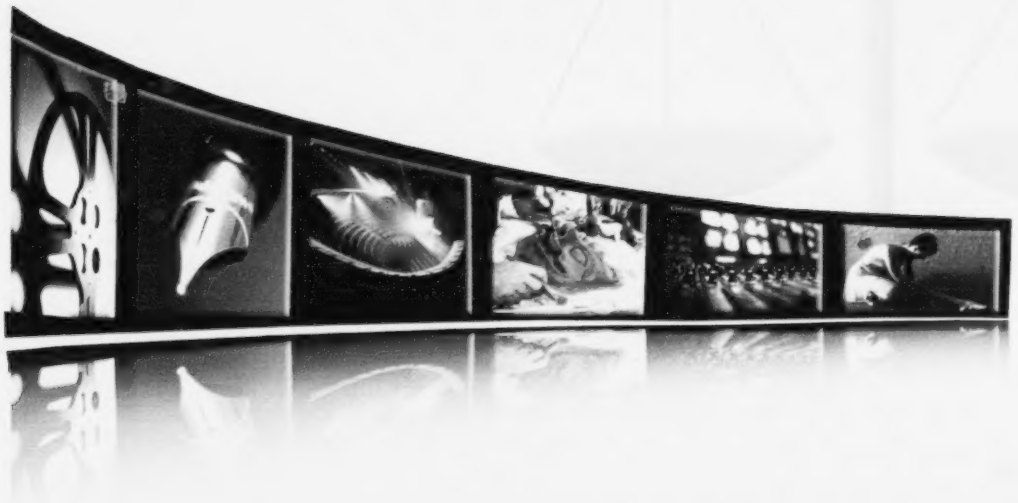
Canadian Artists and Producers Professional Relations Tribunal

Tribunal canadien des relations professionnelles artistes-producteurs



Annual Report

17th report | 2010-2011

Canada

Canadian Artists and Producers
Professional Relations Tribunal

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Canadian Artists and Producers Professional Relations Tribunal
Tribunal canadien des relations professionnelles artistes-producteurs

December 5, 2011

The Honourable Lisa Raitt
Minister of Labour
Ottawa, Ontario
K1A 0J2

Dear Minister Raitt:

In accordance with section 61 of the *Status of the Artist Act*, I am pleased to submit for tabling in Parliament the annual report of the Canadian Artists and Producers Professional Relations Tribunal for the period April 1, 2010 to March 31, 2011.

Yours respectfully,

Elaine Kierans
Acting Chairperson and Chief Executive Officer

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Chairperson's Message

I have the honour, as Acting Chairperson of the Canadian Artists and Producers Professional Relations Tribunal, of presenting the Tribunal's Annual Report for 2010-2011 to Parliament and Canadians. This fiscal year was the 15th year of the Tribunal's existence.

In the period under review, the Tribunal continued to promote and encourage constructive professional relations in the cultural sector, by administering the collective bargaining provisions of the *Status of the Artist Act*.

The *Status of the Artist Act* was one part of Canada's response to the 1980 UNESCO *Recommendation on the status of the artist*, the 30th anniversary of which we celebrated during the period covered by this report. Parliament passed the *Act* to give artists' associations and producers a proper forum for their professional relations, and to give legal recognition and protection to collective bargaining by independent self-employed artists.

As countless studies and reports have shown, culture and the arts play a tremendously important role in Canada's society and economy. They are fundamental to our shared humanity, central to how we as Canadians represent ourselves to the world, and huge in their economic impact, with even small investments yielding multiple benefits in wealth and employment.

Collective bargaining is more important than ever in the arts and culture sector. Faced with the overlapping challenges of technological change, the disruption of traditional business models, and an uncertain world economy, artists and producers need to develop creative collective agreements. These agreements contribute to improved working conditions and compensation for artists, to stable and predictable professional relations and qualified talent pools for producers, and to a strong Canadian presence in international cultural markets. We at the Tribunal are proud to play a role in this.

I have had the pleasure again this year of serving with very qualified Tribunal members.

The appointment of Mr. Robert Beccarea was renewed on October 1, 2010. Mr. Beccarea has over 27 years of legal practice and experience on administrative boards.

The appointment of Ms. Marie-Josée Castonguay was renewed on December 11, 2010. Ms. Castonguay has over 15 years' experience in law and administrative tribunals, and has a particular expertise in labour law.

The appointment of Ms. Lyse Lemieux ended in June, 2010. In accordance with the *Act*, she continues to take part as a member of the panel in the hearing and determination of a case with which she was previously seized. Ms. Lemieux, a noted visual artist, had been a member of the Tribunal since 2002. I would like to take this opportunity to thank her for her many years of service to the Tribunal. We benefited greatly from her expertise and deep understanding of the issues, and were fortunate to have had the opportunity to know her and serve with her.

Our work as Tribunal members would be impossible without the help of a capable staff, and I want to take this opportunity to thank them all. I look forward to working with them, with my fellow members, and with our many stakeholders, in the coming years.

Elaine Kierans
Acting Chairperson and Chief Executive Officer

PART ONE

The Tribunal and What It Does

Mandate

The Canadian Artists and Producers Professional Relations Tribunal administers Part II of the *Status of the Artist Act*, which governs professional relations between self-employed artists and federally regulated producers. The Tribunal is an independent, quasi-judicial federal agency, whose goal is to encourage constructive professional relations between these parties.

The Tribunal's jurisdiction covers broadcasting undertakings under the jurisdiction of the Canadian Radio-television and Telecommunications Commission, federal government departments, and the majority of federal agencies and Crown corporations, such as the National Film Board and national museums.

Self-employed artists within the Tribunal's jurisdiction include artists covered by the *Copyright Act* (such as writers, photographers and music composers), performers (such as actors, musicians and singers), directors, and other professionals who contribute to the creation of a production, such as those doing camera work, lighting and costume design.

The Tribunal has the following principal statutory responsibilities:

- To define sectors of cultural activity suitable for collective bargaining between artists' associations and producers,
- To certify artists' associations to represent self-employed artists working in these sectors, and
- To deal with complaints of unfair labour practices and other matters brought forward by artists, artists' associations or producers, and prescribe appropriate remedies.

In carrying out its responsibilities, the Tribunal assists self-employed artists, artists' associations and producers in the conduct of their professional relations.

Artists' associations certified under the *Act* have the exclusive right to negotiate scale agreements with producers. A scale agreement specifies the minimum terms and conditions under which producers engage the services of, or commission a work from, a self-employed artist in a specified sector, as well as other matters related to the use of the work or services of artists.

Role

The role of the Tribunal is to provide a strong legal framework to support collective bargaining in the arts. This is important to artists, artists' associations and producers, and to Canadians as a whole.

Constructive professional relations are an important element of a vibrant Canadian arts and culture sector. When artists can earn fair compensation and obtain equitable economic and social status with other Canadian workers, they are more likely to continue their artistic work. This provides producers with a national pool of highly skilled artistic talent. Both groups also need a stable, predictable environment. This means improved status, remuneration and working conditions for artists and fair compensation for the use of artists' work, and an environment in which producers can plan their projects around established terms and conditions for engaging artists.

Over the years since the passage of the *Status of the Artist Act*, the Tribunal has defined 26 sectors of artistic activity and certified 24 artists' associations to represent them. Artists' associations certified under the *Act* have gone on to conclude nearly 180 scale agreements with producers, including broadcasters and federal government institutions. Nine percent of these are the first agreements that the parties have ever concluded.

Most sectors are now defined and artists' associations certified to represent them. The work of the Tribunal now focuses more on assisting parties in the bargaining process, renewal of certification orders, dealing with complaints under the *Act* about matters that arise in the bargaining relationship, changes in the definition of sectors and representation, and determining questions referred to the Tribunal by arbitrators.

Our Organization

The Tribunal is an independent quasi-judicial agency. It reports to Parliament through the Minister of Labour.

The Minister of Labour is responsible under the *Act* for tabling the Tribunal's annual report before Parliament and for signing documents required under the *Financial Administration Act*. The Minister of Labour also makes recommendations to the Governor in Council, in consultation with the Minister of Heritage, for the appointment of members to the Tribunal.

Under its governance structure, the Chairperson is the chief executive officer of the Tribunal and is responsible for management of the staff and supervision of the work of the Tribunal.

In 2010-2011, Elaine Kierans presided over the Tribunal as Acting Chairperson.

The Executive Director and General Counsel of the Tribunal assists the Chairperson in the exercise of her functions and, subject to her direction, directs and supervises the day-to-day operation of the Tribunal, the management of its internal affairs, and the work of the employees. As General Counsel, she is also responsible for the provision of legal support and research to the Chairperson and the Tribunal members as required.

Changes at the Tribunal

During fiscal year 2010-2011, two members' terms were renewed, and one member's term came to an end.

Mr. Robert Beccarea was re-appointed as a part-time member of the Tribunal on October 1, 2010, for a term of one year.

Ms. Marie-Josée Castonguay was re-appointed as a part-time member of the Tribunal on December 11, 2010, for a term of one year.

The part-time appointment of Lyse Lemieux, a member of the Tribunal since 2002, ended on June 1, 2010.

Members and Staff of the Tribunal

Elaine Kierans
Acting Chairperson and Chief Executive Officer

Robert Beccarea
Member

Marie-Josée Castonguay
Member

Lyse Lemieux
*Member**

*Term ended June 1, 2010. As permitted under subsection 14(3) of the *Status of the Artist Act*, remained seized of a case before the Tribunal.

Diane Chartrand
Executive Director and General Counsel

Steve Joanisse
Registrar and Senior Legal Counsel

Manon Allaire
Scheduling and Hearing Officer

Brian K. Stewart
Director, Planning, Research and Communications

Marie-Joelle LeBlanc
Research and Communications Officer

Suzanne Séguin
Manager, Corporate Services

Sylvie Besner
Administrative and Financial Officer

PART TWO

Looking back on the UNESCO *Recommendation Concerning the Status of the Artist*

In 2010, we celebrated not only the Tribunal's 15th year of operation, but also the 30th anniversary of the event that, more than any other, led to the Tribunal's creation.

That event was the adoption in 1980 by the United Nations Educational, Scientific and Cultural Organization (UNESCO) of the *Recommendation concerning the Status of the Artist*.

The *Recommendation* was the culmination of a long process. In 1977, the International Labour Organization and UNESCO held a joint meeting of experts to create a policy on the status of the artist. "Status of the artist" was a broad term that later was codified as meaning

> ... on the one, hand, the regard accorded to artists... in a society, on the basis of the importance attributed to the part they are called upon to play therein and, on the other hand, recognition of the liberties and rights, including moral, economic and social rights, with particular reference to income and social security, which artists should enjoy[1].

Under the chairmanship of the late Paul Siren (1917-2009), General Secretary of the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), the group of experts prepared a draft recommendation to the UNESCO member states. Over the next three years, in an international process involving artists, governments and civil society, the draft became a final document. On October 27, 1980, it was adopted by the UNESCO member states, including Canada.

Among its many specific recommendations was this one:

> "... that artists have the freedom and the right to establish trade unions and professional organizations of their choosing and to become members of such organizations, if they so wish, and [member states] should make it possible for organizations representing artists to participate in the formulation of cultural policies and employment policies, including the professional training of artists, and in the determination of artists' conditions of work."

Those recommendations are reflected in several places in the *Status of the Artist Act*. For example, in section 3 of the *Act*:

> 3. Canada's policy on the professional status of the artist, as implemented by the Minister of Canadian Heritage, is based on the following rights:
>
> (a) the right of artists and producers to freedom of association and expression;
>
> (b) the right of associations representing artists to be recognized in law and to promote the professional and socio-economic interests of their members; and
>
> (c) the right of artists to have access to advisory forums in which they may express their views on their status and on any other questions concerning them.

And in sections 7 and 8 of the *Act*:

> 7. The purpose of this Part is to establish a framework to govern professional relations between artists and producers that guarantees their freedom of association, recognizes the importance of their respective contributions to the cultural life of Canada and ensures the protection of their rights.
>
> 8. An artist is free to join an artists' association and to participate in its formation, activities and administration.

---

[1] *Recommendation concerning the Status of the Artist*, 1.2. http://portal.unesco.org/en/ev.php-URL_ID=13138&URL_DO=DO_TOPIC&URL_SECTION=201.html

Canada was the first signatory to the UNESCO *Recommendation* to explicitly provide collective bargaining rights for its self-employed artists.

In the decade following the adoption of the *Recommendation*, Canadian artists, cultural advocates, and Parliamentarians worked to give substance to Canada's commitments. Quebec, with its long tradition of attention to cultural issues, was the first jurisdiction to act on the Recommendation, passing two laws on the status of the artist in 1987 and 1988. In the federal sphere, after a series of studies, working groups, and reports, the three main political parties endorsed a Parliamentary committee report recommending a legal framework for collective bargaining between artists and federal producers, to be administered by an independent administrative tribunal. New legislation was drafted and introduced, and in 1992 the *Status of the Artist Act* was passed.

The *Act* established a framework for artists and producers within federal jurisdiction to conduct effective professional relations. It guaranteed the right of artists to join professional associations and bargain collectively with producers. Artists' associations could apply for certification to represent specific sectors of artistic activity for collective bargaining purposes. Certification gave them the exclusive right to bargain with producers for scale agreements for artists working in their sectors. Scale agreements would set *minimum* terms and conditions under which artists would work; the *Act* was explicit that nothing prevented artists, as independent contractors, from negotiating contracts for themselves with more favourable conditions.

This was a labour relations model tailored to the special situation of artists as self-employed workers. Collective bargaining had been going on in the arts for years, but the *Act* gave it a clear legal standing and an explicit legal architecture. It was important that the body charged with administering these provisions have a good understanding of the arts and cultural industries, and how professional relations worked in those industries. The *Act* established the Canadian Artists and Producers Professional Relations Tribunal as a specialised Tribunal to administer the collective bargaining regime.

To observe the joint occasion of our 15th and the UNESCO Recommendation's 30th anniversaries, the Tribunal asked the Canadian Conference of the Arts (CCA) to undertake a candid assessment of Canada's progress in implementing the Recommendation. The resulting report, entitled "Status of the Artist in Canada," is available on our website[2].

We asked for a candid assessment, and we got one. The study's author, Garry Neil, made a number of comments that gave us pause for thought.

In the end, though, the study was also encouraging. Recent studies have confirmed the enormous economic value of the arts, and the centrality of the arts and cultural issues in the development of Canada's digital economy. Many, if not most, of the problems artists and producers face are the same ones that the UNESCO *Recommendation* urged member nations to address. The study concluded that now is the time "for a renewed initiative because, if Canada is to succeed in the digital and knowledge economy of the 21st Century, the skills and talents of its present and future artists are essential."

We share that view.

[2] www.cappri-tcrpap.gc.ca

PART THREE

This Year at the Tribunal

This Year at the Tribunal

The Tribunal's primary responsibility is to provide its stakeholder base – artists, artists' associations, and producers – with the structured framework for professional relations set out in the *Status of the Artist Act*. The Tribunal also provides stakeholders with assistance and support related to the collective bargaining process.

Tribunal staff members also carry out communications and outreach work to make the *Act* and its provisions more widely known to stakeholders and encourage them to make use of its provisions. In addition, staff members provide support to Tribunal members, and conduct research on issues related to the arts and cultural sector.

Case Activity

The Tribunal began fiscal 2010-2011 with 2 cases pending from the previous fiscal year. During the year, the Tribunal received 4 new applications, and rendered one interim and 8 final letter decisions. (Letter decisions, which are not published, deal mostly with procedural issues.) Three cases were pending at fiscal year-end.

Hearings were held in 2010 into the complaint filed by the Canadian Artists' Representation/Le Front des artistes canadiens (CARFAC) and Le Regroupement des artistes en arts visuels du Québec (RAAV) against the National Gallery of Canada (NGC) on April 22, 2008, alleging that the NGC failed to bargain in good faith (File No. 1330-08-001). The matter was still pending at the end of the fiscal year.

The application for certification from the League of Canadian Composers filed in 2005 (File No. 1310-05-001) was closed in June 2010 because the required information to support the application was never received.

Certification Renewal

Pursuant to subsection 28(2) of the *Act*, an artists' association's certification by the Tribunal as the bargaining agent for a specified sector is valid for three years. During the 2010-2011 fiscal year, eight certification orders issued by the Tribunal came up for renewal:

- Canadian Artists' Representation/Le Front des artistes canadiens (CARFAC)
- Conseil Conseil des métiers d'art du Québec (CMAQ)
- Association des professionnels des arts de la scène du Québec (APASQ)
- Union des artistes (UdA)
- The Writers Union of Canada (TWUC)
- Associated Designers of Canada (ADC)
- Société des auteurs de radio, télévision et cinéma (SARTeC)
- Union des écrivaines et écrivains québécois (UNEQ)

All eight certifications were renewed for a further three years.

The Tribunal's decisions on certification and information about the sectors for which these artists' associations are certified to bargain are available on the Tribunal's website[3].

[3] www.capprt-tcrpap.gc.ca

Bargaining Under the Act

Agreements filed with the Tribunal

Pursuant to subsection 33(2) of the *Act*, parties to a scale agreement are required to file a copy of the agreement with the Minister of Labour without delay. The Tribunal encourages the parties to send a copy of the agreement to the Secretariat of the Tribunal as well, to assist it in reporting on bargaining activity under the *Act*. During the 2010-2011 fiscal year, 8 scale agreements were filed with the Tribunal:

- Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) & CBC Radio (July 1, 2010 to June 30, 2011)
- ACTRA & CBC Television (July 1, 2010 to June 30, 2011)
- Canadian Actors Equity Association (CAEA) & National Arts Centre (Special Events) (September 1, 2010 to August 31, 2011)
- Société des auteurs de radio, télévision et cinéma (SARTeC) & Groupe TVA Inc. (June 1, 2010 to May 31, 2014)
- Société professionnelle des auteurs et des compositeurs du Québec (SPACQ) & Groupe TVA Inc. (June 15, 2010 to December 31, 2012)
- SPACQ & Théatres Associés Inc (August 16, 2010 to August 16, 2012)
- Union des artistes (UdA) & Fort Langley Historical Site (August 1, 2010 to July 31, 2011)
- Writers Guild of Canada (WGC) & National Film Board (August 16, 2010 to August 16, 2012)

These scale agreements are accessible on the Tribunal's website[4].

Notices to bargain filed with the Tribunal

To initiate the bargaining process or to renew or revise a scale agreement, an artists' association or a producer serves a notice to bargain on the other party. Subsection 31(5) of the *Act* states that a party issuing a notice to bargain must file a copy with the Minister of Labour without delay. As with scale agreements, the Tribunal encourages the parties to file copies of their notices to bargain with the Tribunal as well. In fiscal year 2010-2011, six notices to bargain were filed with the Tribunal Secretariat:

- ACTRA & Aboriginal Peoples Television Network
- ACTRA & TV Ontario
- ACTRA & the National Film Board
- CAEA & National Arts Centre (Special Events)
- SARTeC & National Film Board
- UdA & V (formerly TQS)

Once a notice to bargain has been issued, the parties must meet and begin bargaining within twenty days, unless they agree otherwise. Five of the notices to bargain sent in 2010-2011 were still outstanding at the end of the fiscal year.

Tribunal staff members were available throughout the fiscal year to provide information and assistance to the parties in bargaining as required.

[4] www.cappri-tcrpap.gc.ca

Communications and Outreach

Communications and outreach are very important to the Tribunal. The Tribunal's communications strategy, research agenda, and outreach activities continued to be central to its work in 2010-2011. The Tribunal has always worked to ensure that artists' associations and producers understand the *Status of the Artist Act* and what it can do for them. This is of increasing importance with the acceleration of changes in the new media and broadcasting industries.

The Chairperson, members and senior staff members play a key role in building awareness of the Tribunal's mandates and services. They serve on professional committees and frequently share their professional knowledge and experience with colleagues, clients and stakeholders, at conferences, presentations, and training sessions.

Again in 2010-2011, Tribunal senior staff attended industry conferences and met with representatives of artists' associations and producers. This will continue to be a major area of activity for the Tribunal in coming years.

The Tribunal continued to update its website to emphasize the services that the Tribunal can make available to artists, artists' associations, and producers. It also maintained its commitment to the Treasury Board Secretariat's Common Look and Feel (CLF) 2.0 Standards for the Internet. The standards promote consistent branding and ensure accessibility and the use of Canada's two official languages.

All written reasons for decisions are available on the Tribunal's website, as are the Tribunal's *Information Bulletins*.

More detailed information on the Tribunal's activities is available in the Tribunal's annual *Departmental Performance Report*.

Enhanced Assistance to the Parties in the Bargaining Process

Professional relations between artists, artists' associations representing them, and producers are enhanced when all parties work with the same information. The Tribunal's staff members are committed to assisting parties and providing them with information and research, and to making this information publicly available.

The Tribunal continued to add digital copies of scale agreements to its website in 2010-2011. Most of the scale agreements currently in force between artists' associations and producers under the *Act* can be viewed on the Tribunal's website. This is part of a continuing project, which includes providing analyses of the scale agreements and facilitating comparisons between them.

The Tribunal's *Information Bulletin*, which previously had been produced at irregular intervals, moved to a monthly publication schedule in fiscal year 2010-2011. The bulletins provide information on collective bargaining, case activity, and developments at the Tribunal, and are distributed electronically to a mailing list and made available on the website.

Tribunal staff members provide information to artists, producers and members of the public in response to inquiries. This is an ongoing commitment that frequently requires the staff to research complex issues and track down answers.

The complexity of the new digital media environment presents artists, artists' association and producers with unprecedented challenges related to collective bargaining. These have a significant impact on the work of the Tribunal. Much of the Tribunal staff's research focuses on broadcasting, one of the principal areas of the Tribunal's jurisdiction. Broadcasting is undergoing dramatic transformations, with mergers, changes of ownership, new technologies, and disrupted business models. Another area of importance for research is copyright law, since copyright is so fundamental to the monetization of culture, and is frequently an important element in or underlying scale agreements. Tribunal staff followed closely the work of Parliament on Bill C-32, *The Copyright Modernization Act*.

The Tribunal also encourages parties unable to reach an agreement to seek the assistance of professional mediators. Mediators can be appointed pursuant to section 45 of the *Act*. They are appointed from the Federal Mediation and Conciliation Service (FMCS). They are knowledgeable, impartial third parties, with no decision power, who intervene in disputes to help the parties reach their own mutually acceptable solutions. These services are made available free of charge to the parties.

Mediation contributes directly to constructive professional relations in the cultural sector.

PART FOUR

The Context for the Tribunal and the *Status of the Artist Act*

The Context of the Tribunal and the *Status of the Artist Act*

At the UNESCO World Congress on the Status of the Artist in 1997, held to review progress made following the 1980 recommendation on the status of the artist, Canada was often cited as an example. The following conclusion of the Congress is noteworthy:

> Self-employed artists must be able to enjoy the same rights and freedoms as employed people – including the right to bargain collectively and to benefit from social security systems. This was far from being the case in far too many countries.

Artists and producers play a central role in creating and defining Canada and Canadians. They make our lives richer and our society vibrant. They represent Canada internationally. And, as studies keep showing, artistic activity creates jobs and generates wealth well beyond the amounts invested in it.

According to a 2008 analysis[5] by the Conference Board of Canada, the cultural sector generated about $46 billion in real value-added gross domestic product (GDP) in 2007. This constituted 3.8 percent of Canada's real GDP. The cultural sector also created 616,000 jobs.

Moreover, the arts and cultural industries enhance economic performance more generally and act, in the words of the Conference Board, as "a catalyst of prosperity," attracting talent and spurring creativity across all sectors of the economy. The Conference Board found that when the effects on other sectors of the economy were considered, the economic footprint of the arts and cultural industries amounted to about $84.6 billion in 2007, or 7.4 percent of total real GDP, and contributed 1.1 million jobs to the economy.

The earnings of Canadian artists, however, do not reflect their contributions to the country. The Federal Cultural Policy Review Committee observed in 1982 that most artists could best be classified as "highly-specialized, working poor" who subsidized Canada's culture through their unpaid or underpaid labour. Many reports since then have pointed out that artists have significantly lower earnings than other workers, and, because they tend to be self-employed, often do not have access to social program benefits available to employees, such as employment insurance, training benefits and pension funds.

In February 2009, Hill Strategies Research released *A Statistical Profile of Artists in Canada Based on the 2006 Census*[6]. Among the findings was that the number of artists in Canada in 2006 was slightly larger than the number of Canadians directly employed in the automotive industry (135,000). When heritage and cultural occupations were included as part of a broader cultural sector, the number employed swelled to 609,000, about double the number employed in the forestry sector and more than double the number in Canadian banks.

The report highlighted some key facts about artists in Canada. Most noteworthy, and perhaps most predictable, was that their average earnings are very low. Median earnings for artists in 2006 were only $12,900, less than half the typical earnings of all Canadian workers, and 38 percent below the low-income cutoff for larger urban areas. The situation is worse in some arts than in others, and a typical actor, artisan, dancer, musician, or visual artist earns only about $10,000 or less.

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[5] Conference Board of Canada, *Valuing Culture: Measuring and Understanding Canada's Creative Economy* (July 2008). http://www.conferenceboard.ca/e-library/abstract.aspx?did=2671

[6] Available on-line at http://www.hillstrategies.com/docs/Artists_Canada2006.pdf

Another finding confirmed what was known from earlier studies: higher education for artists does not translate into economic success. Not only is the percentage of artists with a bachelor's degree or higher nearly double the rate in the overall labour force, but the average earnings of university-educated artists are less than the average earnings of overall labour force workers with a high school diploma.

What all this points to is that, more than ever, there is a need for a strong collective bargaining regime in the arts, to support predictable, structured professional relations between artists and producers, and to ensure the continued existence of a pool of professional artistic talent.

There are a number of respects in which the *Act* falls short of the expectations of the many artists and producers who welcomed it when it was introduced.

The impact of the *Act* is limited by its application to the federal jurisdiction. Most work in the cultural sector, including the bulk of film and television production, sound recording, art exhibitions, theatrical production and book publishing, falls under the jurisdiction of the provinces.

To date, Quebec is the only province with legislation granting collective bargaining rights to self-employed artists. The need for provincial legislation was recognized by the Standing Committee on Canadian Heritage in its ninth report in 1999, and by the Department of Canadian Heritage in its 2002 evaluation[1] of the provisions and operations of the *Status of the Artist Act*.

The Tribunal supports the adoption by other jurisdictions of collective bargaining legislation for self-employed artists. In the past, it has provided information to policy makers and others interested in the benefits of such legislation, and it will continue to do so.

The *Act*'s effectiveness is also limited because few federal government institutions – one of the class of producers covered by the *Act* – have entered into scale agreements with artists' associations. Artists' associations are typically hard-pressed for time and resources, and would rather negotiate with producers' associations than with individual producers. Similarly, many government producers would prefer to designate one department as their lead negotiator. One of the recommendations from the Department of Canadian Heritage's 2002 evaluation report was that the government consider establishing a single bargaining authority for all departments. The Tribunal supports this recommendation, as it would facilitate the bargaining process and make it more cost-effective, and is committed to working with other federal government institutions to promote understanding of the *Act* and the importance of respecting it.

Most importantly, as the Tribunal has frequently noted in reports to Parliament, amendments to the *Status of the Artist Act* would make the *Act* more effective. Various amendments recommended in the 2002 evaluation of the *Act*, such as requiring arbitration in specific situations for the settlement of first agreements, would further the aims of the *Act*.

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[1] Available on-line at http://www.cappri-fcrpap.gc.ca/eic/site/cappri-fcrpap.nsf/eng/h00164.html

PART FIVE

Case Statistics

Case Statistics

All files[1]	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	Average over past 10 years
Brought forward from previous fiscal year	9	7	7	5	5	7	2	1	2	2	5
New applications received	6	6	7	5	8	1	1	1	1	4	4
Days of hearings held[2]	12	13	11	10	16	1	1	0	0	4	7
Interim decisions rendered	12	5	5	6	6	2	3	2	0	1	5
Final decisions rendered	5	4	7	4	3	4	2	0	1	8	4
Cases withdrawn	1	2	1	1	2	2	0	0	0	0	1
Renewals	6	10	2	8	12	4	8	12	4	8	7
Pending at fiscal year end	7	7	5	5	7	2	1	2	2	3	4

1. Includes complaints and applications for certification, for review of decisions or orders, for determinations or declarations and for consent to prosecute.
2. Includes public hearings and paper hearings.

Spending

	2009-2010	2010-2011
Operating expenditures	$288,972	$376,114
Salaries, wages and other personnel costs	$826,136	$824,013
Total spending	$1,115,108	$1,200,127
Unspent*	$986,098	$909,781
Total available for use	$2,101,206	$2,109,909

* Returned to the Consolidated Revenue Fund of the government.

APPENDICES

APPENDIX 1

Negotiation Activity Under the *Act*

Notices to bargain

A list of notices to bargain sent between April 1, 2010 and March 31, 2011, copies of which were provided to the Tribunal, is found below.

Artists' Associations	Producers
ACTRA Performers Guild	Aboriginal Peoples Television Network
	TV Ontario
	National Film Board
Canadian Actors' Equity Association (CAEA)	NAC Special Events
Société des auteurs de radio, télévision et cinéma (SARTeC)	National Film Board
Union des artistes (UdA)	V

Scale agreements filed with the Tribunal

A list of scale agreements that came into effect in the 2010–2011 fiscal year, copies of which were provided to the Tribunal, is found below.

Artists' Associations	Producers
ACTRA Performers Guild	CBC – Radio
	CBC - Television
Canadian Actors' Equity Association (CAEA)	NAC Special Events
Société des auteurs de radio, télévision et cinéma (SARTeC)	Groupe TVA inc.
Société professionnelle des auteurs et des compositeurs du Québec (SPACQ)	Groupe TVA inc.
	Théâtre Associés (T.A.I.) inc.
Union des artistes (UdA)	Lieu historique Fort Langley
	ARTV
Writers Guild of Canada (WGC)	National Film Board

APPENDIX 2

Members' Biographies

The following members served during the 2010-2011 fiscal year:

Elaine Kierans
Toronto, Ontario
Vice-Chairperson

Elaine Kierans was appointed part-time Vice-Chairperson of the Tribunal on May 15, 2007, and has been Acting Chairperson and Chief Executive Officer since September 8, 2008.

Ms.Kierans worked as a lawyer after graduating from McGill University in 1983, and remains an active member of the Law Society of Upper Canada. She also holds a business degree, specializing in labour relations, from McGill University.

Ms. Kierans has held numerous positions throughout her career including Vice-Chair of the Alcohol and Gaming Commission of Ontario. She also has sat on a number of boards, including those of Brighter Minds Media Inc. and the Toronto French School.

Marie-Josée Castonguay
Toronto, Ontario

Marie-Josée Castonguay has over 15 years of legal experience, specifically in labour law; commercial and banking law; and bankruptcy and insolvency. From 2006 until 2009, she served as a Legal Member of the Canada Pension Plan/Old Age Security Review Tribunals. A member of the Bar for the Province of Quebec, Ms. Castonguay has a Bachelor of Arts degree in Industrial Relations from the University of Montréal and a Bachelor of Laws degree from the University of Ottawa.

Ms. Castonguay was appointed part-time member of the Tribunal on December 14, 2009, for a term of one year, and was re-appointed for a term of one year effective December 11, 2010.

Robert A. Beccarea
Miller Lake, Ontario

Robert Beccarea has over 27 years of experience in private law practice. Through the course of his career, Mr. Beccarea has held many positions in the fields of law and community leadership, including elected Councillor, Ward 2, Corporation of the City of London; Chairperson of the Employment Insurance Boards of Referees (Brantford, Ontario region); and adjudicator, arbitrator and mediator.

Mr. Beccarea has a Bachelor of Laws degree from the University of Western Ontario and was called to the Bar of the Law Society of Upper Canada in 1972. In addition, he has received advanced certification in mediation and negotiation from the Conflict Consensus Institute.

Mr. Beccarea also actively demonstrates his professional and community contributions in his roles as faculty member in the areas of family law and civil procedures for the Bar Admission course in London on behalf of the Law Society of Upper Canada; supervisor of law students; Associate Editor of Family Law Reports; as well as board member, lecturer and guest speaker for various educational institutions.

Mr. Beccarea was appointed part-time member of the Tribunal on October 1, 2009, for a term of one year, and was re-appointed for a term of one year effective December 11, 2010.

Lyse Lemieux
Vancouver,
British Columbia

Lyse Lemieux was appointed as a part-time member of the Tribunal on April 18, 2002. Ms. Lemieux is a visual artist with extensive experience in the field of arts and culture. In addition to her experience in gallery management, her artistic work has been exhibited in Canada and Europe and is held in corporate and private collections.

Ms. Lemieux also worked for the Canadian Broadcasting Corporation for many years, where she produced numerous radio programs. She was assistant producer for the national French radio program *Le Monde à Lanvers* for which she won the 1999 French radio award *"Meilleure création radiophonique."*

Ms. Lemieux's term came to an end in June 2010, although she remained seized of a case before the Tribunal, as permitted under subsection 14(3) of the *Status of the Artist Act*.

APPENDIX 3

Statutory Responsibilities

The *Status of the Artist Act* requires or permits the Tribunal to undertake the following activities:

1. pass by-laws governing the conduct of its affairs [subs.11(2)];
2. hold meetings or proceedings of the Tribunal at such times and locations in Canada as it considers desirable [subs.13(2)];
3. make regulations of general application which it considers conducive to the performance of its duties [s.16];
4. make interim orders [subs.20(2)];
5. rescind or amend determinations or orders and rehear applications [subs.20(1)];
6. file a copy of its order or determination in the Federal Court for purposes of enforcement [s.22];
7. review by-laws of artists' associations [s.23];
8. receive copies of membership lists filed by associations of producers [s.24];
9. receive applications for certification from artists' associations pursuant to s.25 and provide public notice of the application;
10. determine the appropriateness of sectors for collective bargaining [s.26];
11. determine whether an artists' association is representative of the sector for which it seeks certification [s.27];
12. certify artists' associations to represent specific sectors [s.28];
13. maintain a register of all certificates issued [subs.28(4)];
14. receive, consider and decide applications for revocation of certification [s.29];
15. determine the rights, duties and privileges acquired by an artists' association following a merger, amalgamation or transfer of jurisdiction [s.30];
16. determine whether contractual conditions are "more favourable" to an artist than those contained in a scale agreement [subs.33(5)];
17. change the termination date of a scale agreement when so requested by the parties [s.34];
18. hear and determine questions referred to it by an arbitrator or arbitration board [s.41];
19. hear and decide on applications for a declaration that the use of pressure tactics is unlawful and prescribe appropriate remedies [ss.47,48,49];

20. hear and decide applications alleging unfair labour practices and prescribe appropriate remedies [ss.53,54];

21. issue consent to prosecute [s.59];

22. establish other offices which it considers necessary [subs.13(1)];

23. prepare and submit an annual report to Parliament through the Minister of Labour regarding activities during the fiscal year [s.61].